IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/08/2002

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

S.A.No.1849 of 1989

Periasamy Padayachi .. Appellant

-Vs-

Andal .. Respondent

Appeal against the judgment and decree dated 9.9.1989 made in A.S. No.73 of 1989 on the file of the Additional District Judge, Cuddalore, reversing the judgment and decree dated 14.2.1989 made in O.S.No.140 of 1987 on the file of the Subordinate Judge, Vridhachalam.

!For appellant : Mrs.Beula Rajakumari
for Mr.S.Udhayakumar

^For respondent : Mrs.Hema Sampath

:JUDGMENT

The appellant is the plaintiff in O.S.No.140 of 1987, laid for recovery of a sum of Rs.16,000/-, based on a promissory note marked as Ex.A1 dated 26.2.1987, executed by the respondent/defendant in favour of the appellant/ plaintiff. The respondent/defendant resisted the suit, alleging that the suit promissory note dated 26.2.1987, marked Ex.A1, is a forged document.

2. Upon the above rival contentions, the learned Subordinate Judge, Vridhachalam, framed the following issues:
ii.Whether the suit promissory note marked as Ex.A1 dated 26.2.1987 is a forged document?
iii.To what relief the plaintiff is entitled for?

3. To substantiate their respective contentions, the appellant/ plaintiff examined himself as P.W.1 and also one of the attestors to the promissory notes as P.W.2, and marked five documents, viz., Ex.A1 to Ex.A5, of which, Ex.A1 is the suit promissory note dated 26.2.1987, executed by the respondent/defendant in favour of the appellant/ plaintiff; Ex.A2 is the notice sent on behalf of the appellant/ plaintiff to the respondent/defendant

dated 19.10.1987; Ex.A3 is the acknowledgment dated 23.10.1987 of the said notice dated 19.10.1987; Ex.A4 is the reply notice dated 26.10.1987; and Ex.A5 dated 13.5.1981 is the sale deed executed by the respondent/defendant, wherein, the husband of the respondent/defendant, the other attestor of the suit property, has signed as a witness. The respondent/defendant examined herself as DW1 and her husband was examined as DW2 and the scribe of the promissory note has been examined as DW3.

4. Appreciating the above evidence, both documentary and oral, the learned Subordinate Judge, Vridhachalam, by judgment and decree dated 1 4.2.1989 made in O.S.No.140 of 1987, found that the suit promissory note is true and valid, and decreed the suit as prayed for. But on appeal in A.S.No.73 of 1989, the learned Additional District Judge, Cuddalore, by judgment and decree dated 9.9.1989 made in A.S.No.73 of 19 89, set aside the decree and judgment of the

learned Subordinate Judge, Vridhachalam dated 14.2.1989 made in O.S.No.140 of 1987, and allowed the appeal, as a result of which, the suit was dismissed. Hence, the above second appeal.

5. Mrs.Beula Rajakumari, learned counsel appearing for the appellant/plaintiff, raised a substantial question of law in this second appeal, viz., whether the lower appellate Court's finding of material alteration in the promissory note is justified without comparing the signatures under Section 73 of the Evidence Act or without seeking any Expert opinion.

6. It is true that the learned Additional District Judge, Cuddalore, by judgment and decree dated 9.9.1989 made in A.S.No.73 of 1989, reversed the judgment and decree of the learned Subordinate Judge, Vridhachalam, dated 14.2.1989 made in O.S.No.140 of 1987, finding that the signature of the executor of the promissory note is forged, noticing the over-writing of the signature.

7. To meet the above substantial question of law arising out of this second appeal, I am constrained to look into the suit promissory note dated 26.2.1987, marked as Ex.A1 itself, and the same was produced to the learned counsel for the appellant/plaintiff. The learned counsel for the appellant/plaintiff could not dispute the finding of the learned Additional District Judge, Cuddalore, that there is a clear over-writing on the signature of the executor.

8. When the over-writing of the signature of the respondent/ defendant, on the face of it, is explicit, I do not see any necessity to send the promissory note for expert's opinion. That apart, if the appellant, who is the plaintiff himself, wants to substantiate his claim that the signature of the respondent/defendant-executor is not forged, he should have taken steps to discharge his burden. Having failed to do so, it is not open to the appellant/ plaintiff to say that the learned Additional District Judge, Cuddalore, has erred in giving a finding of material alteration of the promissory note, without referring the same for expert's opinion.

I answer the above subsantial question of law, accordingly. In the result, this second appeal is dismissed. No costs.

Index: Yes
Internet: Yes
06.08.2002

ksv
To:
1. The Additional District Judge, Cuddalore.
2. The Subordinate Judge, Vridhachalam.
Copy to:
The Record Keeper, V.R.Section, High Court, Madras.

P.D.DINAKARAN,J.